

## **GATS 2000**

### **REQUEST FROM THE EC AND ITS MEMBER STATES (HEREINAFTER THE EC)**

#### **TO**

#### **THE UNITED STATES OF AMERICA**

#### **GENERAL REMARKS**

At the WTO Ministerial Conference in Doha in November 2001, Ministers agreed that initial requests for specific commitments should be submitted by 30 June 2002.

In line with this decision, and committed to the objectives and principles stated in Article IV and XIX GATS, as well as the negotiating guidelines agreed by the Council for Trade in Services on 29 March 2001, the EC encourages USA to participate actively in the negotiations.

The EC considers that the progressive liberalisation of services is of benefit for all members, including developing and least developed countries. In this context, the EC recognises the importance of liberalisation being underpinned by domestic regulatory frameworks designed to ensure the achievement of public policy objectives.

This request covers horizontal commitments, MFN exemptions and the following service sectors:

- Professional services
- Business services
- Postal and courier services
- Telecommunication services
- Construction and related engineering services
- Distribution services
- Educational services
- Environmental services
- Financial services
- Tourism and travel related services
- Transport services
- Energy services

The EC proposes that USA's current GATS commitments are revised in accordance with this request. The EC is both seeking improved commitments and clarification of existing commitments as set out in this request. The EC is furthermore looking for a reduction in scheduled limitations whether these

are horizontal or sector specific in nature. In so doing, the EC is not seeking the dismantling of public services nor the privatisation of state owned companies.

In conformity with the objectives set out in the EC's overall approach to services negotiations (document S/CSS/W /15), the EC reiterates its commitment to promote regulatory disciplines in accordance with Article VI:4 of the GATS. The EC, however, reserves its right to address at any time to USA specific requests concerning regulatory issues.

The EC further requests that commitments are entered in accordance with the scheduling guidelines adopted by the Council of Trade in Services on 23 March 2001 (S/L/92). In particular, for each commitment or limitation entered the EC requests:

- that the sector and sub-sector are clearly identified in accordance with the classification list in Document MTN.GNS/W/120 or other internationally recognised classification (e.g. Financial Services Annex) and/or corresponding CPC number. If there is no appropriate classification, the schedule should contain a sufficiently detailed definition to avoid any ambiguity as to the scope of the commitment. In that respect, the EC would like to recall the classification or list of activities proposed in its negotiating proposal with regard to postal and courier, environmental and energy services. While discussions on classification in this sector are still ongoing, the EC would like to invite USA to present its offer in accordance with this approach.
- that any remaining limitation on market access (hereafter "MA") or on national treatment (thereafter "NT") are clearly described and only be inscribed in the market access or national treatment columns if the measure is of a nature foreseen by Articles XVI-XVII GATS.

The EC remains available to provide any clarification and answer any question on this request. Questions can be addressed to the European Commission via the EC contact point, via the Delegation of the European Commission in Geneva, or at the following EC officials in Directorate-General Trade Unit D2 (Trade in services, including e-commerce) Brussels, B-1049, Belgium, fax 32-2-299 24 35).

*Note : The EC reserves the right to revise and/or supplement this request. For each service sector, W120 classification has been followed unless expressly indicated and CPCs refer to the Provisional CPC classification. The precise scope for each sector is without prejudice to the EC's final positions on classification issues and to the EC's classification of their existing commitments.*

# HORIZONTAL COMMITMENTS

## EC REQUEST TO THE UNITED STATES OF AMERICA

### MODE 4

#### **Intra-corporate transferees**

- The EC requests that a commitment be made to allow as intra-corporate transferees « persons with a university degree or equivalent technical qualification who are transferring for career development purposes or to obtain training in business techniques or methods ». The maximum prior employment requirement should be one year.

#### **Contractual Service Suppliers**

- A contractual service supplier is a juridical person with no commercial presence in the United States, who has obtained a service contract in the United States which requires the presence of its employees in the United States in order to fulfil that contract. **EC request** : Clarify scope of existing commitments in relation to contractual service suppliers employed in the following sectors.

List of sectors :

#### 1. Business Services

Legal Services

Accounting and bookkeeping services

Taxation services

Architectural services

Engineering Services

Integrated engineering services

Urban planning and landscape architectural services

Computer and Related Services

Research and Development Services

Advertising

Management consulting services

Services related to management consulting

Technical testing and analysis services

Related scientific and technical consulting services

Maintenance and repair of equipment

Interpreters

#### 3. Construction and related engineering services

Site investigation work (CPC 5111)

#### 4. Distribution Services

Wholesale trade services (CPC 622)

## 6. Environmental Services

All sub-sectors

## 7. Financial Services

Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services

Advisory, intermediation and other auxiliary financial services on all the activities listed in the subparagraphs (v) to (xv) of the classification of the Annex on Financial Services, including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy

### **Additional commitments**

- Difficulties are experienced as a result of the length of time taken to process H1B visas as well as with visits linked to short-term projects work. The EC wishes to discuss the possibility of taking additional commitments to address these issues.

*Note : Mode 4 is covered horizontally in this part for all service sectors. The sectoral requests in the following pages only refer to mode 4 when specifically related to one particular service sector.*

### **Acquisition of land**

- Mode 3 – NT: restrictions on ownership or purchase of land by non-US citizens in South Carolina, Oklahoma, Florida, Wyoming and Mississippi. **EC Request:** give national treatment to foreign-owned companies.
- Mode 3 – NT: restrictions on purchase of public lands by non-US citizens in Hawaii, Idaho, Mississippi, Montana and Oregon. **EC Request:** give national treatment to foreign-owned companies.

### **Taxation measures**

#### **Modes 1, 2 and 3 – NT: direct taxes at the federal level**

- differential tax treatment between trusts organised in the US and trusts not organised in the US. **EC Request:** eliminate, as this measure falls under Article XIV of GATS and therefore does not need to be scheduled.
- Different Federal income tax imposed on service suppliers of Members that impose discriminatory or extraterritorial taxes on US services suppliers: **EC request:** remove the entry as this is an MFN exemption.

#### **Modes 1, 2 and 3 – NT taxes other than direct taxes at the federal level**

- Excise tax in connection with transfer of property to a foreign entity. **EC Request:** eliminate this discrimination.

- Excise tax on income of foreign private foundations. **EC Request:** the EC would appreciate clarification, as this measure appears to be a direct tax.

### **Subsidies**

- Federal small business administration loans restricted to US citizens. **EC Request:** commit national treatment for foreign owned companies.

## PROFESSIONAL SERVICES

### EC REQUEST TO THE UNITED STATES OF AMERICA

USA has committed this sector only partially. The EC requests that this sector is committed as follows:

#### **A. LEGAL SERVICES (CPC 861)**

- In several States, this sub-sector is not committed or partially committed for practice of international public law or of third country law (additional commitments). **EC Request:** For all States, extend sectoral coverage of commitments to consultancy on international public law and on law of jurisdiction where the service supplier or its personnel are qualified lawyers.
- Modes 1, 2 and 3: MA – Supply of services through a qualified US lawyer restricted to natural persons. **EC Request:** Remove this restriction.
- Modes 3 and 4: MA – Supply of services through a qualified US lawyer restricted by citizenship requirement for practice before the US Patent and Trademark Office. **EC Request:** Remove this restriction.
- Mode 3: MA – In 35 States this mode remains unbound for consultancy on law of jurisdiction where the service supplier is a qualified lawyer. **EC Request:** Remove and allow market access.
- Modes 3 and 4: NT – In-state residency requirement applicable in Michigan, Texas and Washington for consultancy on law of jurisdiction where the service supplier is a qualified lawyer. **EC Request:** Remove this requirement.
- Mode 4: MA – This mode remains unbound in 35 States and is subject to the establishment of an in-state office in the District of Columbia, Minnesota, New Jersey, New York and Ohio . **EC Request:** Commit for all States as referred to in the section “Horizontal commitments”.
- Conditions mentioned in footnotes: Prior practice requirements when licensing as foreign legal consultant in the USA. **EC Request:** Remove this requirement.

#### **B. ACCOUNTING, AUDITING AND BOOKKEEPING SERVICES (CPC 862)**

- Mode 3: MA – Obligation to incorporate in Iowa. **EC Request:** Remove this requirement.
- Mode 4: MA – Obligation of establishing an in-state office in several States. **EC Request:** Remove this requirement.
- Mode 4: MA – Citizenship requirement in North Carolina. **EC Request:** Remove this requirement.
- Mode 4: NT – Residency requirement in several States. **EC Request:** Remove this requirement.

In addition, the non-recognition of international accounting standards has been reported. The EC wishes to discuss the scope of this regulatory trade barrier and the solution to be given to this issue.

**D. ARCHITECTURAL SERVICES (CPC 8671)**

**G. URBAN PLANNING AND LANDSCAPE ARCHITECTURAL SERVICES (CPC 8674)**

For each of these two sub-sectors:

Mode 3: MA – Local licensing of two-thirds of the officers, partners and/or directors of an architectural firm in Michigan. **EC Request:** Remove this requirement.

**E. ENGINEERING SERVICES (CPC 8672)**

**F. INTEGRATED ENGINEERING SERVICES (CPC 8673)**

For each of these two sub-sectors:

- Mode 4: MA – Citizenship requirement in the District of Columbia. **EC Request:** Remove this requirement.
- Mode 4: NT – In-state residency requirement in Idaho, Iowa, Kansas, Maine, Mississippi, Nevada, Oklahoma, South Carolina, South Dakota, Tennessee, Texas and West Virginia. **EC Request:** Remove this requirement.

## **BUSINESS SERVICES (OTHER THAN PROFESSIONAL SERVICES)**

### **EC REQUEST TO THE UNITED STATES OF AMERICA**

#### **B. COMPUTER AND RELATED SERVICES**

Schedule commitments at the two-digit level, i.e. CPC 84.

#### **C. RESEARCH AND DEVELOPMENT SERVICES**

USA has not committed this sector. The EC requests that it be committed as follows for privately financed Research and Development:

- a) R&D Services on natural sciences (CPC 851)**
- b) R&D Services on social sciences and humanities (CPC 852)**
- c) Interdisciplinary R&D services. (CPC 853)**

For each of the above sub-sectors :

- Modes 1, 2 and 3 : Take full commitments, i.e. schedule "none" under MA and NT.
- Mode 4 : Commit as referred to in the section "Horizontal commitments".

#### **D. REAL ESTATE SERVICES**

- a) Involving own or leased property (CPC 821) and**
- b) On a fee or contract basis (CPC 822)**
  - Mode 4: MA – US citizenship requirement for real estate broker in New York  
**EC Request:** remove this requirement.

#### **E. RENTAL AND LEASING SERVICES WITHOUT OPERATORS**

USA has not committed the following sub-Sector. The EC requests that it be committed as follows :

- a) Relating to ships (CPC 83103)**

For the above sub-sector :

- Modes 1 and 3 : Take full commitments, i.e. schedule "none" under MA and NT.
- Mode 4 : Commit as referred to in the section "Horizontal commitments".



## **F. OTHER BUSINESS SERVICES**

*NB: Requests (if any) on (h) - services incidental to mining, and (j) - services incidental to energy distribution, are covered in those sections of the request dealing with Energy Services and Construction Services.*

### **e) Technical testing and analysis services (CPC 8676)**

The United States has not committed this sub-Sector. The EC requests that it be committed as follows :

- Modes 1, 2, 3 : Take full commitments, i.e. schedule "none" under MA and NT.
- Mode 4 : Commit as referred to in the section "Horizontal commitments".

### **l) Security Services (CPC 87302 – 87309)**

- Mode 3: MA – permanent resident alien status or US citizenship required to own contract security companies in Maine. **EC Request:** remove this requirement.

### **m) Related scientific and technical consulting services (CPC 8675)**

USA has not committed the following sub-sectors: land surveying for the purpose of establishing legal boundaries, aerial surveying and aerial map-making. **EC Request:** Extend sectoral coverage to all of CPC 8675.

### **r) Printing and Publishing Services (CPC 88442)**

This sub-sector has not been committed for “printing”. **EC Request:** Extend sectoral coverage to all of CPC 88442.

### **t) Translation Services (CPC 87905)**

USA has not committed this sub-Sector. The **EC requests** that it be committed as follows :

- Modes 1, 2, 3 : Take full commitments, i.e. schedule "none" under MA and NT.
- Mode 4 : Commit as referred to in the section "Horizontal commitments".

### **Washing and Cleaning services (CPC 97011-97014)**

USA has not committed this sub-sector. **EC request:**

- Mode 3: Take full commitments, i.e. schedule “none” under MA and NT.
- Mode 4: Commit as referred to in the section “Horizontal commitments”.

## **POSTAL AND COURIER SERVICES**

### **EC REQUEST TO THE UNITED STATES OF AMERICA**

USA has only partially committed this sector (commitments in courier services). This request is based on the EC proposal for the classification of postal and courier services. While discussions on classification in this sector are still ongoing, the EC would like to invite USA to present its offer in accordance with this proposal, without prejudice to the outcome of the discussion on the classification of postal and courier services:

#### **SERVICES RELATING TO THE HANDLING<sup>1</sup> OF POSTAL ITEMS<sup>2</sup>, WHETHER FOR DOMESTIC OR FOREIGN DESTINATIONS:**

**A. Handling of addressed written communications on any kind of physical medium<sup>3</sup>, including:**

- Hybrid mail services

- Direct mail

**B. Handling of addressed parcels and packages<sup>4</sup>**

**C. Handling of addressed press products<sup>5</sup>**

**D. Handling of items referred to in A. to C. above as registered or insured mail.**

**E. Express delivery services<sup>6</sup> for items referred to in A. to C. above.**

**F. Handling of non-addressed items.**

**G. Document exchange.**

**H. Other services not elsewhere specified.**

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1 The term "handling" should be taken to include clearance, sorting, transport and delivery.

2 "Postal item" refers to items handled by any type of commercial operator, whether public or private.

3 E.g. letter, postcards.

4 Books, catalogues are included hereunder.

5 Journals, newspapers, periodicals.

6 Express delivery services may include, in addition to greater speed and reliability, value added elements such as collection from point of origin, personal delivery to addressee, tracing and tracking, possibility of changing the destination and addressee in transit, confirmation of receipt.

**EC request for sub-sectors B., C., E., F. and G. :**

- Modes 1, 2 and 3 : Undertake full commitments for market access and national treatment.
- Mode 4 : Commit as referred to in the section « Horizontal commitments ».

**EC request for sub-sectors A. and D. :**

- Modes 1, 2 and 3 : Undertake commitments for market access and national treatment.
- Mode 4 : Commit as referred to in the section « Horizontal commitments »

## TELECOMMUNICATION SERVICES

### EC REQUEST TO THE UNITED STATES OF AMERICA

USA has only partially committed this Sector. The EC requests that this Sector be committed as follows :

#### **ALL-MODES – VALUE-ADDED SERVICES**

The schedule refers to U.S. internal definitions, thereby undermining legal certainty, and restricts the scope of services to those provided above common carrier networks.

**EC request:** remove these restrictions.

#### **MODE 3 - ESTABLISHMENT**

Comsat has exclusive rights to links with Intelsat and Inmarsat. **EC request:** remove this restriction.

Direct Ownership of a common carrier radio license may not be granted to or held by

- (a) foreign government or the representative thereof
- (b) non-U.S. citizen or the representative of any non-U.S. citizen
- (c) any corporation not organized under the laws of the United States or
- (d) U.S. corporation of which more than 20% of the capital stock is owned or voted by a foreign government or its representative, non-U.S. citizens or their representatives or a corporation not organized under the laws of the United States

**EC request:** remove these restrictions.

#### **ADDITIONAL COMMITMENTS**

In the additional commitments made by USA, there is a restriction on the Reference Paper concerning interconnection obligations. Rural local exchange carriers may be exempted by a state regulatory authority for a limited period of time from the obligations of section 2.2. with regard to interconnection with competing local exchange carriers. Also, Rural telephone companies do not have to provide interconnection to competing local exchange carriers in the manner specified in section 2.2. until ordered to do so by a state regulatory authority.

**EC request:** remove these restrictions.

## **MFN EXEMPTION**

USA has registered an MFN exemption on one-way satellite transmission of DTH and DBS television services and of digital audio services. **EC request:** remove this MFN exemption.

# CONSTRUCTION AND RELATED ENGINEERING SERVICES

## EC REQUEST TO THE UNITED STATES OF AMERICA

### GENERAL

USA has committed this Sector only partially. The EC requests that this sector be committed as follows:

### ALL SUB-SECTORS (CPC 511 to CPC 518)

- Sector coverage: the United States has specifically excluded “Marine Dredging” from this sector. **EC Request:** Remove this exclusion and specify that commitments in this sub-sector cover dredging services.
- Mode 4: MA – An in-state office must be maintained by all contractors in Michigan. **EC Request:** Remove this requirement.

## **DISTRIBUTION SERVICES**

### **EC REQUEST TO THE UNITED STATES OF AMERICA**

USA has only partially committed this Sector. The EC requests that this sector be committed as follows :

#### **ALL SUB-SECTORS**

**EC Request** : include the CPCs as indicated below in the appropriate sector column :

- A. Commission agents' services (CPC 621, 6111+6113+6121)
- B. Wholesale trade services (CPC 622, 6111+6113+6121)
- C. Retailing services (CPC 631+632, 6111+6113+6121+613)
- D. Franchising (CPC 8929)

#### **B. WHOLESALE TRADE SERVICES (CPC 622)**

#### **C. RETAILING SERVICES (CPC 631+632, 6111+6113+6121)**

For B and C., the distribution of the following goods is not committed :

- alcoholic beverages
- military equipment.

#### **EC Request:**

For alcoholic beverages :

- Modes 1, 2, 3 : Take full commitments, i.e. schedule "none".
- Mode 4 : Commit as referred in the section "Horizontal commitments".

For military equipment:

- Clarify the scope of the exclusion in particular by identifying more precisely the goods excluded (e.g. arms, ammunitions, explosives ).

## **EDUCATIONAL SERVICES**

### **EC REQUEST TO THE UNITED STATES OF AMERICA**

USA has only partially committed this sector. The EC requests that this sector be committed as follows:

#### **C. HIGHER EDUCATION SERVICES (CPC 923)**

This sub-sector is not committed. **EC Request:**

- Modes 1, 2, 3 : Take commitments for privately funded educational services.
- Mode 4 : Commit for privately funded educational services as referred to in the section “Horizontal commitments”.



# **ENVIRONMENTAL SERVICES**

## **EC REQUEST TO THE UNITED STATES OF AMERICA**

This request is based on the EC proposal for the classification of environmental services. While discussions on classification in this sector are still ongoing, the EC would like to invite USA to present its offer in accordance with this proposal, without prejudice to the outcome of the discussion on the classification of environmental services:

### **A. WATER FOR HUMAN USE & WASTEWATER MANAGEMENT**

**Water collection, purification and distribution services through mains, except steam and hot water.**

This sub-sector only concerns the distribution of water through mains' (i.e. urban sewage systems). This excludes any cross-border transportation either by pipeline or by any other means of transport nor does it imply access to water resources.

Extend sectoral coverage to include the above services.

- Mode 3: Take commitments under MA and NT.
- Mode 4: Commit as referred to in the section 'Horizontal commitments'.

### **Waste water services (CPC 9401)**

Remove limitation of commitments to services contracted by private industry

### **B. SOLID/HAZARDOUS WASTE MANAGEMENT**

#### **Refuse disposal services (CPC 94020)**

Remove limitation of commitments to services contracted by private industry.

## FINANCIAL SERVICES

### EC REQUEST TO THE UNITED STATES OF AMERICA

#### INSURANCE

- Mode 1: NT – Discriminatory federal excise taxes on premiums ceded abroad (1% in reinsurance and life insurance, 4% in non-life insurance). **EC Request:** Eliminate this discrimination.
- Mode 1: NT – Requirement that ships built with Government aid can only be placed outside the US if the risk is first offered in the US market. **EC Request:** Remove this requirement.
- Modes 1 and 2: In order to undertake surplus lines business foreign insurers are required to hold a local trust fund and to be “white-listed”. **EC Request:** Remove these requirements.
- Modes 1 and 2: Several States (including California, Florida and Texas) have narrow MAT definitions, which have the effect of restricting business (particularly marine business). **EC request:** Allow the cross-border supply of MAT insurance, and of reinsurance in all States on the basis of a broad national definition.
- Modes 1 and 2: MA and NT – No commitment has been taken on cross-border insurance of large risks, based on a definition to be determined in negotiations and accompanied by appropriate prudential regulations adopted by the regulatory authorities of the host country and protecting policy holders, avoiding discrimination between operators, in line with the principles agreed in the OECD Framework for Insurance Market Liberalisation.
- Modes 1 and 3: MA – In direct insurance and reinsurance, government-owned or government-controlled companies are not authorised to conduct business in various States. **EC Request:** Eliminate this ban.
- Mode 3: MA – In direct insurance and reinsurance, no mechanism for licensing initial entry of a foreign insurance company as a subsidiary or a branch in various States. **EC Request:** Remove this restriction.
- Mode 3: No agreed NAIC model law, which would limit the costs incurred to obtain licenses for subsidiaries or branches in various States. **EC Request:** Remove these requirements.
- Mode 3: MA – In direct insurance, requirements of US citizenship and residency for members of the board and incorporators in various States. **EC Request:** Remove those requirements.
- Mode 3: No access for foreign insurers (due to a change in internal rules of the American organisation International Traffic in Arms Regulations (ITAR)) to technical information essential to the rating of space risks in the USA. **EC Request:** Allow access to the information.

- Modes 1 and 2: MA and NT – State-level compulsory reinsurance cessations. **EC Request:** Eliminate the discriminatory regime regarding the compulsory cessations.
- Modes 1 and 2: Discriminatory treatment of obligations from non-US reinsurers, amounting to a requirement to fund locally 100% of gross obligations by means of deposits or letters of credit or, in the case of a multi-beneficiary arrangement, 100% of obligations plus deposit of capital, without recognition of US or other retrocessional protection allowed to US domestic reinsurers. **EC Request:** Remove these discriminations.
- Modes 1 and 3: NT – Discrimination against non-US reinsurers of US Treasury listed insurers. **EC request:** Remove this discrimination.
- Modes 1 and 3: Requirement that insurers or sureties which provide, or which reinsure, undertakings or performance bonds to the US Government (“US Treasury listed insurers”) be US domestic companies and be corporate in form. **EC Request:** Remove these requirements.
- Modes 1 and 3: MA – In various States, brokerage and agency licenses are not issued to non-residents and/or are limited to certain lines of insurance. **EC request:** Remove these restrictions.
- Modes 1 and 3: MA – All States require in State residency for surplus lines brokers and agents. **EC request:** Eliminate this restriction.
- Modes 1 and 3: NT – In direct insurance, brokerage and agency services, higher licence fees for non-residents may be charged. **EC Request:** Eliminate this discrimination.
- Modes 1 and 3: MA – Citizenship requirement in various States for services auxiliary to insurance. **EC Request:** Eliminate this requirement.

### **BANKING AND OTHER FINANCIAL SERVICES**

- Mode 3: NT – Discriminatory registration requirement for foreign banks under the Investment Advisers Act of 1940 to engage in securities advisory and investment management services. **EC Request:** Remove this discrimination.
- Mode 3: MA - Citizenship requirements, both at federal (directors of national banks) and State level (directors and incorporators of depository financial institutions, collection agency services), as well as residency requirements at State level (directors and incorporators of depository financial institutions. **EC Request:** Remove those requirements.
- Mode 3: MA – Prohibition for foreign banks’ branches established after 1991 to accept or maintain domestic retail deposits of less than \$100,000. **EC Request:** Reduce this threshold.
- Mode 3: MA - Expansion via establishment or acquisition of a branch is unbound. **EC Request:** Take commitments.
- Mode 3: MA - In various States, no possibility of initial establishment of State-chartered subsidiaries, branches, representative offices, or savings and loan associations. **EC Request:** Remove this restrictions.
  
- Mode 3: MA – Disproportionate asset pledge requirements for foreign banks’ branches, either federally-licensed or State-licensed in various States, in particular New York. **EC Request:** Remove this restriction.

- Modes 1 and 2: Restrictions on the marketing (I.e. offering and selling) of derivative products, especially futures. **EC request:** Remove these restrictions
- Modes 1 and 2: MA – Impossibility for foreign mutual funds to make public offerings in the US. **EC Request:** remove this restriction.
- Modes 1, 2 and 3: Supervision of European mother company of mutual funds set by European managers under the Investment Advisers Act as amended in 1994/1995. **EC Request:** Limit supervision to entities in the USA.
- Mode 3: Requirement that foreign qualified employees of non-US licensed institutions who wish to become National Futures Association Approved persons must be sponsored by a US institution, notwithstanding that they may have met all Commodity Futures Trading Commission and National Futures Association educational requirements. **EC request:** Eliminate this requirement.
- Mode 3: MA – Unbound for the authority to act as a sole trustee of an indenture for a bond offering. **EC request:** Take commitments.
- Mode 3: MA – unbound for the granting or continuation of status of primary dealer in US Government debt. **EC Request:** Take commitments.

### **MFN EXEMPTIONS**

- Insurance – Reciprocity condition. **EC Request:** Remove the reciprocity condition.
- Banking – Reciprocity tests in various States. **EC Request:** Eliminate the reciprocity tests.
- Trustee services – Reciprocity condition. **EC Request:** Remove the reciprocity condition.
- Primary dealing in US Government debt – Reciprocity condition. **EC Request:** Eliminate the reciprocity condition.

## **TOURISM AND TRAVEL RELATED SERVICES**

### **EC REQUEST TO THE UNITED STATES OF AMERICA**

#### **C. TOURIST GUIDES SERVICES (CPC 7472)**

- Mode 3: Market Access: **EC Request:** Remove limitations on number of concessions available for commercial operations.
- Mode 4: Commit as referred to in the section 'Horizontal commitments'.

# TRANSPORT SERVICES

## EC REQUEST TO THE UNITED STATES OF AMERICA

### A. MARITIME TRANSPORT

USA has no commitment for maritime transport.

**EC Request:** Take commitments in accordance with the attached model schedule (Annex 1). In particular for the following areas:

- 1) **International transport (freight and passengers) CPC 7211 and 7212**
- 2) **Additional commitments for access to and use of ports facilities**
- 3) **Maritime auxiliary services (maritime cargo handling, storage and warehouse services, customs clearance services, container station and depot services, maritime agency services)**
- 4) **Multimodal activities: for inland forwarding of cargoes - commit the ability to rent or lease - or to have access to and use of multimodal facilities (as specified in the note to the schedule).**
- 5) **Definitions – commit definitions as specified in the model schedule.**

The EC also request the following additional maritime commitments from USA:

- 6) **Equipment.** To facilitate planning of their businesses operators should be allowed to reposition their own equipment, such as empty containers, between ports of USA, when it is not carried against payment. This is requested to be committed in a new footnote:

*“9. Movement of own equipment. International maritime transport suppliers can move/reposition their own equipment (i.e. empty containers, flatbeds etc.) on their own vessels between ports of USA.”*

- 7) **International cargo.** With the development of containerisation and high frequency networking services and with the ever-larger vessels having to limit direct port calls for physical or economic reasons, the feeding of cargoes between main ports and way ports is becoming more important as an integral part of efficient international maritime transport. An international maritime transport supplier should be allowed to operate feeder services for its own international cargo between ports of USA. This is requested to be committed in a new footnote:

*“10. International maritime transport suppliers can operate vessels for the purposes of pre- and onward carriage of the international cargo between ports of USA“*

In this context USA may wish to take the one or more of the following principles into concern:

- Size of the port. Only valid for international cargo relayed between national ports handling more than [25.000 TEU] on an annual basis.
- Binding existing ad hoc practices. To the extent exceptions are already granted for use of foreign flagged vessels such practices could be bound to explicitly cover pre- and onward carriage of international cargo.
- Geographical limitations: Transport of international cargo between ports within the same state [or other relevant sub-federal/regional entity] remains excluded.

A final request related to maritime transport is:

**8) Rental and leasing of vessels with crew (CPC 7213, 7223).**

**EC Request:**

- Modes 1, 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred to in the section “Horizontal commitments”.

USA has currently restricted this activity to international transport.

**B. INTERNAL WATERWAYS:**

USA has no commitment for this activity.

**c) Rental and leasing of vessels with crew (CPC 7213, 7223)**

**EC Request:**

- Modes 1, 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

**C. AIR TRANSPORT**

**1) Maintenance and repair of aircraft and parts thereof.**

**EC Request:**

- Modes 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

**2) Selling and marketing.**

USA has no commitment for this activity.

**EC Request:**

- Modes 1, 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

**3) Computer Reservation Systems.**

USA has no commitment for this activity.

**EC Request:**

- Modes 1, 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

**4) Groundhandling services, as specified in the attached definitions (Annex 2).**

**EC Request:**

- Modes 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

**5) Airport management services, as specified in the attached definitions (Annex 2).**

**EC Request:**

- Mode 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

**C. AIR TRANSPORT SERVICES**

USA has a MFN exemption for measures which pertain to selling and marketing of air transport services (including sales, other than by airlines, of passenger charters and forwarding of air freight other than by airlines) and to operation and regulation of computer reservation system (CRS) services, as described in the Annex on Air Transport Services.

**EC Request:**

Remove elements concerning freight forwarding (see EC request for air transport/auxiliary services). Limit exemption for selling/marketing and CRS systems by specifying the practices targeted by the exemption.



## **F. ROAD TRANSPORT SERVICES**

USA has an MFN exemption for issuance of trucking licenses for cross border licensing on a reciprocity basis.

**EC Request:** Clarify under which circumstances these benefits from agreements would also apply to a Community company authorised and established in the USA (see road transport where the EC request opening of Mode 3 for freight transportation).

## **H. SERVICES AUXILIARY TO ALL MODES OF TRANSPORT**

USA has no commitment for these sub-groups

### **b) Storage and Warehouse Services (CPC 742)**

**EC Request:**

- Modes 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

### **c) Freight Transport Agency/Freight Forwarding Services (CPC 748) and Pre-shipment Inspection (part of CPC 749)**

**EC Request:**

- Modes 1, 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

**ANNEX 1: SCHEDULE ON MARITIME TRANSPORT SERVICES**

A. SECTOR OR SUB-SECTOR	B. LIMITATIONS ON MARKET ACCESS	Limitations on National Treatment	C. ADDITIONAL COMMITMENTS
<p>TRANSPORT SERVICES MARITIME TRANSPORT SERVICES International Transport (freight and passenger) CPC 7211 and 7212 <u>less</u> cabotage transport (as defined below – 1)</p>	<p>1) (a) <u>Liner Shipping</u>: none (b) <u>Bulk, tramp, and other international shipping, including passenger transportation</u>: none</p> <p>2) None</p> <p>3) (a) Establishment of registered company for the purpose of operating a fleet under the national flag of the State of establishment: unbound (b) Other forms of commercial presence for the supply of international maritime transport services (as defined below – 2): none</p> <p>4) (a) Ships crews: unbound (b) Key personnel employed in relation to a commercial presence as defined under mode 3b) above: Unbound except as in horizontal section</p>	<p>1) (a) None (b) None</p> <p>2) None</p> <p>3) (a) Unbound</p> <p>(b) None</p> <p>4) (a) Unbound (b) Unbound except as in horizontal section</p>	<p>The following services at the port are made available to international maritime transport suppliers on reasonable and no discriminatory terms and conditions</p> <ol style="list-style-type: none"> <li>1. Pilotage</li> <li>2. Towing and tug assistance</li> <li>3. Provisioning, fuelling and watering</li> <li>4. Garbage collecting and ballast waste disposal</li> <li>5. Port Captain’s services</li> <li>6. Navigation aids</li> <li>7. Shore-based operational services essential to ship operations, including communications, water and electrical supplies</li> <li>8. Emergency repair facilities</li> <li>9. Anchorage, berth and berthing services</li> </ol>

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
MARITIME AUXILIARY SERVICES Maritime Cargo Handling Services (as defined below – 4)	1) Unbound* except for – no limitation on transshipment (board to board or via the quay) and/or on the use of on-board cargo handling equipment 2) None 3) None** 4) Unbound except as in horizontal section	1) Unbound* except for no limitation on transshipment (board to board or via the quay) and/or on the use of on-board cargo handling equipment 2) None 3) None 4) Unbound except as in the horizontal section	
Storage and warehousing Services CPC 742	1) Unbound* 2) None 3) None** 4) Unbound except as in horizontal section	1) Unbound* 2) None 3) None 4) Unbound except as in the horizontal section	
Customs Clearance Services (as defined below – 5)	1) Unbound* 2) None 3) None** 4) Unbound except as in horizontal section	1) Unbound* 2) None 3) None 4) Unbound except as in the horizontal section	
Container Station and Depot Services (as defined below – 6)	1) Unbound* 2) None 3) None** 4) Unbound except as in horizontal section	1) Unbound* 2) None 3) None 4) Unbound except as in the horizontal section	
Maritime Agency Services (as defined below – 7)	1) None 2) None 3) None 4) Unbound except as in horizontal section	1) None 2) None 3) None 4) Unbound except as in the horizontal section	
(Maritime) Freight Forwarding Services (as defined below – 8)	1) None 2) None 3) None 4) Unbound except as in horizontal section	1) None 2) None 3) None 4) Unbound except as in the horizontal section	

\* A commitment on this mode of delivery is not feasible.

\*\* Public utility concession or licensing procedures may apply in case of occupation of the public domain.

## NOTE TO THE SCHEDULE

Where road, rail, inland waterways (and) (related) (auxiliary) services are not otherwise fully covered in (this) (a Member's) schedule, a multimodal transport operator (as defined below - 3) shall have the ability to rent or lease trucks, railway carriages or barges and related equipment, for the purpose of inland forwarding of cargoes, or have access to, and use of, these forms of multimodal activities on reasonable and non-discriminatory terms and conditions for the purpose of carrying out multimodal transport operations. (« Reasonable and non-discriminatory terms and conditions» means, for the purpose of (multimodal transport operations), (this additional commitment), the ability of the multimodal transport operator to arrange for the conveyance of its merchandise on a timely basis, including priority over other merchandise which has entered the port at a later date).

### DEFINITIONS

1. Without prejudice to the scope of activities which may be considered as «cabotage» under the relevant national legislation, this schedule does not include «maritime cabotage services », which are assumed to cover transportation of passengers or goods between a port located in ... [name of country] ... and another port located in ... [name of the country], traffic originating and terminating in the same port located in [name of country] provided that this traffic remains within ... [name of country]'s territorial waters and transportation of passengers and goods between a port located in ... [name of the country] ... and installations or structures situated on the continental shelf of [name of the country].

2. « Other forms of commercial presence for the supply of international maritime transport services » means the ability for international maritime transport service suppliers of other Members to undertake locally all activities which are necessary for the supply to their customers of a partially or fully integrated transport service, within which the maritime transport constitutes a substantial element. (This commitment shall however not be constituted as limiting in any manner the commitments undertaken under the cross-border mode of delivery).

These activities include, but are not limited to:

- (a) marketing and sales of maritime transport and related services through direct contact with customers, from quotation to invoicing, these services being those operated or offered by the service supplier itself or by service suppliers with which the service seller has established standing business arrangements;
- (b) the acquisition, on their own account or on behalf of their customers (and the resale to their customers) of any transport and related services, including inward transport services by any mode, particularly inland waterways, road and rail, necessary for the supply of the integrated services;
- (c) the preparation of documentation concerning transport documents, customs documents, or other documents related to the origin and character of the goods transported;
- (d) the provision of business information by any means, including computerised information systems and electronic data interchange (subject to the provisions of the annex on telecommunications);
- (e) the setting up of any business arrangements (including participation in the stock of a company) and the appointment of personnel recruited locally (or, in the case of foreign personnel, subject to the horizontal commitment on movement of personnel) with any locally established shipping agency;
- (f) acting on behalf of the companies, organising the call of the ship or taking over cargoes when required.

3. « Multimodal transport operators » means the person on whose behalf the bill of lading /multimodal transport document, or any other document evidencing a contract of multimodal carriage of goods, is issued and who is responsible for the carriage of goods pursuant to the contract of carriage.
4. « Maritime cargo handling services » means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operation companies. The activities covered include the organisation and supervision of:
- the loading/ discharging of cargo to/from a ship;
  - the lashing/unlashing of cargo;
  - the reception/ delivery and safekeeping of cargoes before shipment or after discharge
5. « Customs clearance services » (alternatively « customs house brokers' services ») means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity.
6. « Container station and depot services » means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/ stripping, repairing and making them available for shipments.
7. « Maritime agency services » means activities consisting in representing within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:
- marketing and sales of maritime transport and related services from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;
  - acting on behalf of the companies organising the call of the ship or taking over cargoes when required.
8. « Freight forwarding services » means (the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information)..

## **ANNEX 2 FACILITATING AIR TRANSPORT SERVICES**

### **Ground-handling Services**

Efficient ground-handling is essential to the proper functioning of air transport and competition between operators in this area ensures that proper use is made of air transport infrastructure. It helps reduce the operating costs of airlines and improves the quality of service for airport users.

For specialised groundhandling suppliers the following activities are requested:

Ground Administration – supervision and administration at the airport (CPC 7461);  
Passenger Handling – assisting arriving, departing and transfer passengers (CPC 7461);  
Baggage Handling – handling baggage in the sorting area (CPC 7461);  
Freight and Mail Handling – physical handling of freight and mail, dealing with security and customs procedures (CPC 74110 (container handling services) and 74190 (other cargo handling services));  
Ramp Handling – marshalling and moving the aircraft, loading and unloading of aircraft, transport of passengers, freight, supplies (CPC 7469).  
Aircraft Services – cleaning the aircraft, heating and cooling, removal of snow and ice (CPC 7469);  
Fuel and Oil Handling – organisation and provision of fuel and oil;  
Aircraft Maintenance – covered specifically by the Annex as above;  
Flight Operations and Crew Administration – preparation of the flight, inflight and post-flight assistance, crew administration;  
Surface Transport – organisation and execution of transport within airport – except to and from aircraft;  
Catering Services – administration, storage, preparation and delivery of bar and food supplies (CPC 6423).

### **Airport management services**

Airport management services constitute the core activities of airport services providers and cover: Airport operation services (excl. cargo handling), including passenger air terminal services and ground services on air fields, including runway operating services, on a fee or contract CPC 74610. Activities are also related to “other management consulting services” (CPC 86509) and activities separately specified under “other management services not elsewhere classified”(CPC 86609). A commitment will allow services suppliers to take an equity stake in - and engage in the overall operation and management of - airports when these are open for investments from private operators. Thereby it will bind existing common practices in the sector.

# **ENERGY SERVICES**

## **EC REQUEST TO THE UNITED STATES OF AMERICA**

This request includes services that are listed under the negotiating proposal of the EC (S/CSS/W/60). The work on the classification of these services is still underway. For this reason, some activities therefore lacks reference to CPC.

The EC wishes to underline the significant contribution of an appropriate use of energy for the promotion of sustainable development.

The EC requests that this area is committed as follows :

### **A. SERVICES RELATED TO EXPLORATION AND PRODUCTION**

#### **CPC 511 and CPC 513: Construction and related engineering services**

- Mode 4: MA – An in-state office must be maintained by all contractors in Michigan. **EC Request:** Remove this requirement.

### **B. SERVICES RELATED TO THE CONSTRUCTION OF ENERGY FACILITIES**

#### **B.1 Construction of energy facilities**

##### **CPC 513: Construction work for civil engineering**

##### **CPC 51340: For long distance pipelines, communication and power lines (cables)**

##### **CPC 51350: For local pipelines and cables; ancillary works**

##### **CPC 51360: For constructions for mining and manufacturing**

- Mode 4: MA – An in-state office must be maintained by all contractors in Michigan. **EC Request:** Remove this requirement.

#### **B.2 Installation and assembly work**

##### **CPC 516: Installation and assembly work**

- Mode 4: MA – An in-state office must be maintained by all contractors in Michigan. **EC Request:** Remove this requirement.

### **C. SERVICES RELATED TO NETWORKS**

#### **C.1 Operation of transportation/transmission and distribution facilities**

##### **CPC 71310: Transportation of petroleum and natural gas**

This sub-sector is not committed. **EC Request:**

- Modes 3 : Take commitments.
- Mode 4 : Commit as referred in the section "Horizontal commitments".

## **D. STORAGE SERVICES**

### **CPC 74220: Bulk storage services of liquids or gases**

This sub-sector is not committed. **EC Request:**

- Mode 3 : Take full commitments, i.e. schedule "none".
- Mode 4 : Commit as referred in the section "Horizontal commitments".

## **E. SERVICES FOR THE SUPPLY OF ENERGY**

### **E.1 Wholesale of energy products**

#### **Wholesale trade services of electricity**

**EC Request:**

- Modes 3 : Take full commitments, i.e. schedule "none".
- Mode 4 : Commit as referred in the section "Horizontal commitments".

### **E.2 Retail Sale of energy products**

#### **Retail sale trade services of electricity**

**EC Request:**

- Modes 3 : Take commitments for the supply to industrial customers.
- Mode 4 : Commit as referred to in the section "Horizontal commitments".

### **E.3 Trading of energy products**

**EC Request:**

- Modes 1, 2, 3 : Take full commitments, i.e. schedule "none".
- Mode 4 : Commit as referred in the section "Horizontal commitments".

### **E.4 Brokering of energy products**

**EC Request:**

- Modes 1, 2, 3 : Take full commitments, i.e. schedule "none".
- Mode 4 : Commit as referred in the section "Horizontal commitments".

## **G. SERVICES RELATED TO DECOMMISSIONING**

**EC Request:**

- Modes 3 : Take full commitments, i.e. schedule "none".
- Mode 4 : Commit as referred in the section "Horizontal commitments".



## **MFN EXEMPTIONS**

### **Pipeline Transport**

- USA has an MFN exemption regarding the acquisition of right-of-way for oil or gas pipelines across on-shore federal lands or acquisition of leases or interests in certain minerals on on-shore federal lands. Such MFN exemption establishes also a condition of reciprocity for 100 per cent interest by non-US citizens in a domestic corporation carrying the above mentioned activities.
- **EC Request:** Clarify in detail the different cases of application of the MFN and the conditions and criteria for the application and evaluation of the reciprocity conditions. Eliminate the MFN exemption.

## MFN EXEMPTIONS

### EC REQUEST TO THE UNITED STATES OF AMERICA

#### GENERAL

##### **Taxation measures**

- More favourable treatment benefiting resident of countries contiguous to the United States. **EC Request:** Remove the entry. If this measure is allowed under Article XIV of GATS, the entry does not need to appear in the list of MFN exemptions..
- Benefits available under the US IRC with respect to US possession: **EC Request:** Remove the entry. If this measure is allowed under Article XIV of GATS, the entry does not need to appear in the list of MFN exemptions.
- Benefits available under the US IRC with respect to CBI beneficiary countries. **EC Request:** clarify the regime.
- Reciprocal reduction of taxation on income derived from the international operation of aircraft or of taxation of certain earnings derived from the use of railroad rolling stock. **EC Request:** Remove the entry. If this measure is allowed under Article XIV of GATS, the entry does not need to appear in the list of MFN exemptions.
- Tax exemption for earnings derived from the operation of a communications satellite system, pursuant to the Communications Satellite. **EC request:** Clarify the compatibility of this measure with GATS Article XIV
- General exception for sub-federal tax measures. **EC Request:** Clarify the compatibility of this measure with GATS Article XIV.

##### Foreign policy:

- Denial of statutory reduction of double taxation because the country participates in a an international boycott. **EC Request:** eliminate this exemption.
- Measures permitting less favourable taxation for citizens, corporations or products of a foreign country based on discriminatory or extraterritorial taxes, more burdensome taxation, or other discriminatory conduct. **EC Request:** eliminate this exemption.

##### **Land use**

- Reciprocity provision in Wyoming. **EC Request:** eliminate this measure.

##### **Sectoral MFN exemptions:**

See EC request on telecommunications services, financial services, transport services and energy services.